



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

AUG 13 2007

Cleta Mitchell, Esq.
Foley & Lardner, LLP
Washington Harbour
3000 K Street, NW, Suite 500
Washington, D.C 20007-5143

RE: MUR 5587R
David Vitter for U.S. Senate and
William Vanderbrook, in his official
capacity as treasurer

Dear Ms. Mitchell:

On July 27, 2007, the Federal Election Commission accepted the signed conciliation agreement submitted on your clients' behalf in settlement of a violation of 2 U.S.C. § 441d. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink that reads "Greg J. Mueller". The signature is written in a cursive, flowing style.

Greg J. Mueller
Attorney

Enclosure
Conciliation Agreement

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RECEIVED
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OFFICE OF GENERAL
COUNSEL
BEFORE FEDERAL ELECTION COMMISSION

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3 In the Matter of 2007 JUL 18 P 2: 18)
4) MUR 5587R
5 David Vitter for U.S. Senate and)
6 William Vanderbrook, in his official)
7 capacity as treasurer)
8

9 **CONCILIATION AGREEMENT**

10
11 This matter was initiated by a signed, sworn, and notarized complaint by John A. Miller.

12 An investigation was conducted, and the Federal Election Commission ("Commission") found
13 probable cause to believe that David Vitter for U.S. Senate and William Vanderbrook, in his
14 official capacity as treasurer ("Respondent") violated 2 U.S.C. § 441d.

15 NOW, THEREFORE, the Commission and Respondent, having duly entered into
16 conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

17 I. The Commission has jurisdiction over Respondent and the subject matter of this
18 proceeding.

19 II. Respondent has had a reasonable opportunity to demonstrate that no action should
20 be taken in this matter.

21 III. Respondent enters voluntarily into this agreement with the Commission.

22 IV. The pertinent facts in this matter are as follows:

23 1. David Vitter for U.S. Senate ("the Committee") is a political committee
24 within the meaning of 2 U.S.C. § 431(4), and was David Vitter's authorized committee for his
25 2004 Senatorial race in Louisiana.

26 2. The Act requires that political committees "making a disbursement for the
27 purpose of financing any communication . . . through any other type of general public political
28 advertising" must place a disclaimer in the communication. 2 U.S.C. § 441d. Furthermore, the

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1 regulations state that any “public communication” for which a political committee makes a
2 disbursement must contain a disclaimer. 11 C.F.R. § 110.11.

3 3. A public communication includes a communication by telephone bank to
4 the general public. 2 U.S.C. § 431(22); 11 C.F.R. § 100.26. A telephone bank means that more
5 than 500 calls of an identical or substantially similar nature were made within a 30-day period.
6 2 U.S.C. § 431(24); 11 C.F.R. § 100.28. The Explanation and Justification discussing the
7 disclaimer regulations implementing the 2002 Bipartisan Campaign Reform Act (“BCRA”)
8 amendments to the Federal Election Campaign Act of 1971, as amended (“the Act”), also make
9 clear that a telephone bank is considered a type of general public political advertising. *See*
10 67 Fed. Reg. 76962, 76963 (Dec. 13, 2002) (“each form of communication specifically listed in
11 the definition of ‘public communication,’ as well as each form of communication listed with
12 reference to a ‘communication’ in 2 U.S.C. 441d(a), must be a form of ‘general public political
13 advertising.’”).

14 4. A disclaimer must be presented in a “clear and conspicuous manner” in
15 order to give the listener “adequate notice of the identity of the person or political committee that
16 paid for and, where required, that authorized the communication.” 11 C.F.R. § 110.11(c)(1).

17 5. A disclaimer, if paid for and authorized by a candidate or an authorized
18 committee of a candidate, must clearly state that the communication has been paid for by the
19 authorized political committee. 11 C.F.R. § 110.11(b)(1).

20 6. The Committee hired a company to conduct telephone calls prior to the
21 November 2004 Senatorial election. Two sets of calls are at issue in this matter. One consisted
22 of advocacy and voter identification calls. At the beginning of each call of those calls, the callers
23 informed the recipient that s/he was “working with the David Vitter for U.S. Senate Campaign.”

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1 The callers then explained, "I have decided to work to elect David Vitter because he has worked
2 hard to bring good jobs to Louisiana[. . .] has a concrete record of fighting political corruption
3 [a]nd fully supports the Bush tax cuts;" asked the recipient of the call if "David Vitter [can]
4 count on your vote on election day;" and asked what issue the recipient considered to be the most
5 important issue facing our nation today. The caller ended by stating, "Thank you for your time
6 and we really do hope you will consider David Vitter for U.S. Senate when you go to vote." The
7 callers stated that they worked with the Committee but did not clearly state that the calls were
8 paid for by the Committee.

9 7. A second group of calls are referred to as the "Undecided" calls. In the
10 "Undecided," the caller stated that they were from a company, and the name used was a d/b/a of
11 the company hired to make the calls. The callers simply asked the recipient, "In the U.S. Senate
12 Race (sic) in November are you more likely to vote for:" and then listed the names of the
13 candidates, including David Vitter. The callers were instructed to rotate the order of the names
14 being read. When eliciting information concerning the voting preferences of the recipients, the
15 callers did not clearly state that the calls were paid for by the Committee.

16 8. In both sets of calls, more than 500 calls were made within a 30-day
17 period.

18 9. Respondent contends that it clearly and conspicuously identified the
19 source of the first set of phone calls. Regarding the second set of calls, Respondent contends that
20 the callers sought information from the recipients but did not disseminate any information to
21 them in the manner of calls made for opinion polling.

22 V. For the purpose of settling this matter and avoiding the expense of litigation,
23 Respondent will no longer contest that it violated 2 U.S.C. § 441d.

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1 VI. 1. Respondent will pay a civil penalty to the Federal Election Commission in
2 the amount of Twenty-Five Thousand Dollars (\$25,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

3 2. Respondent will cease and desist from violating 2 U.S.C. § 441d by
4 making disbursements for telephone bank calls without including a proper disclaimer.

5 VII. The Commission, on request of anyone filing a complaint under 2 U.S.C.
6 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance
7 with this agreement. If the Commission believes that this agreement or any requirement thereof
8 has been violated, it may institute a civil action for relief in the United States District Court for
9 the District of Columbia.

10 VIII. This agreement shall become effective as of the date that all parties hereto have
11 executed same and the Commission has approved the entire agreement.

12 IX. Respondent shall have no more than 30 days from the date this agreement
13 becomes effective to comply with and implement the requirement contained in this agreement
14 and to so notify the Commission.

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1 X. This Conciliation Agreement constitutes the entire agreement between the parties
2 on the matters raised herein, and no other statement, promise, or agreement, either written or
3 oral, made by either party or by agents of either party, that is not contained in this written
4 agreement shall be enforceable.

5 FOR THE COMMISSION:

6 Thomasenia P. Duncan
7 General Counsel

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9

10 BY:


11 Ann Marie Terzaken
12 Acting Associate General Counsel
13 for Enforcement

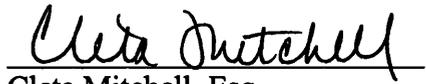
8/10/07
Date

14 FOR THE RESPONDENT:

15 David Vitter for U.S. Senate,
16 William Vanderbrook, in his official capacity as treasurer

17
18

19 BY:


20 Cleta Mitchell, Esq.
21 Counsel for Respondent

July 18, 2007
Date

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